D.B.CIVIL WRIT PETITION NO. 1678/2006
Amba Lal Nayak v. Union of India & ors.

Date of order : 19.07.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri P.S.Bhati, for the petitioner

In this writ petition filed as a public interest litigation the petitioner has questioned the sale of the Laxmi Vilas Palace Hotel at Udaipur in favour of M/s Bharat Hotels Ltd., and sought direction to order CBI inquiry into the matter, and a further direction to restore the original status of the hotel prior to its sale, and for appropriate punitive steps against the responsible persons for effecting the sale.

At the outset it may be stated that the hotel was sold under disinvestment policy of the Government of India in 2002 and none other than the petitioner along with one R.K.Rajdan had filed similar writ petition being D.B.Civil Writ Petition no. 910/2002 challenging the sale which was dismissed on 4.4.1992. The Court observed as under :

> "As the subject matter of petition is transfer of property only and it does not survive after the modus operandi of disinvestment has been shown, this writ petition is dismissed without making any comments on the question of modus operandi adopted in disinvesting the business of ITDC relating to Laxmi Vilas Palace Hotel."

The petitioner contends that he has since obtained documents showing the value of the property and is now in a position to demonstrate that the hotel was sold for a meagre amount. The petitioner has placed reliance on report of the Deputy Controllor, Registration and Stamps dated 26.3.2002 and letters of the Additional Collector, Udaipur and the Collector, Udaipur, both dated 3.4.2002. In course of hearing counsel produced letter of the Senior Accounts Officer of the office of the Accountant General (Audit) II, Rajasthan dated 21.2.2003. Reference was made to some news items published in daily newspapers.

It was submitted that the writ petition is founded on fresh materials and liberty had been given by this Court in the order dated 4.4.2002 while dismissing the writ petition, to file another writ petition on fresh materials. It is seen that the materials except the letter of the Senior Accounts Officer dated 21.2.2003 were available with the petitioner before disposal of the writ petition on 4.4.2002. In the said letter dated 21.2.2003 the Senior Accounts Officer on behalf of the Accountant General simply sought information on certain points indicated in the letter from the Deputy Inspector General, Registration and Stamps, Udaipur.

The submission regarding liberty to file fresh writ petition is

based on misreading of the order. The relevant part occurs in the paragraph containing submissions of the counsel and runs as under :

> "Liberty may be reserved for bringing a fresh petition, if the petitioners are able to lay hand on material to indicate the arbitrariness in in transferring the control of Laxmi Vilas Palace Hotel in private hands."

There is no indication in the operative part of the order or elsewhere that any liberty was given to the petitioner to file fresh writ petition . Indeed, the Court had expressed doubts about bona fides of the petitioner which is evident from the following observations in the order :

> "We find that so far as petitioner no.1 is concerned, he had interestedly pursued the litigation about the transfer of property in question as its employee and a member of the hotel workers union of the ITDC, and that interest can be pursued in an adversary litigation, not by way of Public Interest Litigation."

The fact that the petitioner happened to be an employee and member of the Hotel Workers Union of the ITDC has been suppressed in the writ petition. The petitioner has described himself simply as "a permanent resident of Udaipur city and a social worker of the society".

To sum up, the petitioner has challenged sale of the hotel after four years and dismissal of the first writ petition by a speaking order.

The ground of challenge is the same, namely, sale of assets worth for alleged paltry sum of Rs. 7.52 Crores only. The materials which are the foundation of the petitioner's case, referred to above, were available with the petitioner when the petition came up for final disposal. Above all, bona fides of the public interest litigation at the instance of the petitioner having been doubted, we are of the view that the petitioner has been pursuing a useless litigation in the garb of public interest litigation.

In State of Karnataka & anr. v. All India Manufacturers Organisation & ors, (2006) 4 SCC 683 the Supreme Court held that where a writ petition in the nature of public interest litigation is filed in respect of same subject matter even by another person, proceedings would be hit by the principle of constructive res-judicata. The petitioner herein being one of the petitioners in the previous case and the prime mover of the litigation, we are of the view that the petition should be dismissed with costs.

In the result, the writ petition is dismissed with cost of Rs. 5,000/- (Rupees Five Thousand only) payable to Rajasthan State Legal Services Authority.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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